

PUBLIC INFORMATION

SCHOOL DISTRICT RECORDS — LOCAL BOARDS OF EDUCATION MUST SUPPLY NAMES AND ADDRESSES OF STUDENTS UPON REQUEST.

May 21, 1974.

Honorable Raymond E. Beck,
House of Delegates.

Your recent letter asks our opinion whether county boards of education are required to supply the names and addresses of students within their schools on request, under the provisions of the Public Information Act, Article 76A, Sections 1-5 of the Annotated Code of Maryland (1969 Rep. Vol., 1973 Cum. Supp.).

Section 2 (a) of Article 76A provides:

"All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office."

In addition, Section 4 provides, in effect, that wherever there is a right of inspection of a public record, there is an accompanying right to obtain copies of said record for a reasonable fee. It appears, therefore, that if names and addresses of pupils are within the definition of the term "public records" as used in Article 76A and are not otherwise exempt from disclosure either under Article 76A or under any other provision of law, a local board of education must supply copies for a reasonable fee, if facilities for making copies are available, or allow inspection of the records if there are no copying facilities.

Section 1 (a) of Article 76A defines the term "public record" to include:

"... any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State and any counties, municipalities and political subdivisions thereof and by any agencies of the State, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law."

Section 1 (b) further classifies public records as "official public records" or "office files and memoranda". We assume that the names and addresses of all pupils attending school in a particular county, are filed with their respective local boards of education. It follows that such a filing would constitute a public record within the meaning of the above definition.

Section 3 (a) of Article 76A denies the right of inspection to what would otherwise be a public record, if such inspection would be (i) contrary to any State statute or (ii) contrary to any federal statute or regulation issued thereunder having the force and effect of law. We have examined provisions of Article 77, the Public School Law, but have found no *statutory* provision which would exempt the lists in question from the operation of the Public Information Act. We are aware that Article 77, Section 6, empowers the State Board of Education to enact by-laws which, when published, shall have the force of law. Pursuant to said Section, the State Board has enacted Sections 751.2 and 751.3 of its Code of By-Laws, which state the individual pupil records are confidential in nature and are to be made available only to the pupils' parents or legal guardians in conference with the appropriate school personnel. However, a comparison of Section 3 (a) (i) with Section 3 (a) (ii) indicates that state regulations, unlike federal regula-

tions and state and federal statutes, do not prevail when they conflict with the disclosure requirements of Article 76A. Moreover, assuming *arguendo* that the by-laws of the State Board are equivalent to State statutes because they have been given the force and effect of law, we still do not believe that a listing of the names and addresses of pupils, without more, would constitute individual pupil records within the meaning of the by-laws.

Section 3(c) (viii) of Article 76A provides a further exception with respect to inspection of school district records. It states that the custodian shall deny the right of inspection to:

“School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him.”

We are unable to fit the names and addresses of pupils into any of the foregoing protected categories and conclude that Section 3(c) (viii) does not apply to deny such inspection.

In an opinion to the Bank Commissioner respecting the duty to disclose the name and residence of bank shareholders, we said that disclosure of the place of residence without stating the exact street address was sufficient compliance with the disclosure requirements in view of the purpose of the statute to identify shareholders by name, residence and number of shares subscribed to and paid for. 59 Opinions of the Attorney General 59 (1974). Since our conclusion was based upon interpretation of the specific requirements of the banking statute, it is not pertinent to the question now before us.

We have found no Maryland decisions which aid us in interpreting the provisions of Article 76A. However, the Maryland Public Information statute is in many respects similar to the federal Freedom of Information Act, 5

U.S.C. Section 552 and there is a growing body of federal decisions construing its provisions. In the case of *Getman v. NLRB*, 450 F. 2d 670 (D.C. Cir.), *application for stay denied*, 404 U.S. 1204 (1971), it was held that bare lists of names and addresses of employees which private employers were requested by law to give to the NLRB without any express promise of confidentiality were not within any exemption from disclosure under the Freedom of Information Act. On appeal, the Supreme Court refused to stay an order requiring the lists be supplied to the plaintiffs. Although the Maryland statute, unlike the federal statute, permits the official custodian of any public record to apply to the District Court for an order restricting disclosure if he believes that disclosure of the contents of a record “would do substantial injury to the public interest”, the holding of *Getman, supra*, makes it doubtful that the Maryland courts would treat disclosure of the lists of names and addresses of public school pupils as “doing substantial injury to the public interest”.

We are mindful that disclosure of the subject names and addresses may be commercially exploited or otherwise used in a manner irksome or offensive to the individuals concerned or their families. Moreover, we are loath to appear to diminish in any way the privacy which all of us value so highly. However, we must take cognizance of the cases which have balanced individual rights, including the right of privacy, against the duty of the custodian to make public records available for inspection. It has been held that no exemption from disclosure will be implied based upon the motivation of the requesting party and that when a statute requires disclosure to “any person”, as the Maryland statute does, inspection of public records may not be denied because it is sought for commercial purposes or for material gain. *Wine Hobby, USA, Inc. v. United States Bureau of Alcohol, Tobacco and Firearms*, 363 F. Supp. 231 (E.D. Pa. 1973); *Haawkes v. Internal Revenue Service*, 467 F. 2d 787 (6th Cir. 1972); *Citizens for Better Education, et al. v. Board of Education of the City of Camden*, 308 A. 2d 35 (N.J. 1973).

In his concurring opinion in *Getman, supra*, Judge MacKinnon, Circuit Judge, stated at pages 680 and 681:

'It seems to me that furnishing bare lists of names and addresses of various groups of persons in various Government files is not the sort of disclosure that Congress basically had in mind in enacting the Freedom of Information Act. But in my opinion, the Act as it presently exists practically requires the disclosure of such lists on demand. One need not elaborate on the various abuses that could result if lists of people as classified by the Government for particular purposes became available practically on demand in wholesale lots. If this situation is to be corrected, it will require an amendment to the Act'.

It is our opinion that denial of public inspection to any person of the names and addresses of public school pupils contained in the files of a local board of education is not authorized by Article 76A, the Maryland Public Information Act, and that such disclosure may not be excluded in the absence of an appropriate amendment of Article 76A, Section 3(c) (viii). We would add that although these names and addresses are subject to public inspection in the present state of the law, we have found nothing in the statute which would require the custodian to compile such lists if the information is not already in his files in the form requested. The custodian of the records is not obliged to disrupt the operation of his office in order to achieve compliance but may require inspection or furnish copies at reasonable times and under reasonable conditions. Moreover, we believe that in computing the reasonable charges for supplying copies, he may properly take into account the time spent by his clerical staff in complying with the request, as well as the usual mechanical costs of duplicating.

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RACING COMMISSION

LICENSING AND REGULATION—ARTICLE 78B, SECTIONS 7 AND 17—RACING COMMISSION DOES NOT HAVE AUTHORITY TO AWARD ADDITIONAL RACING DATES TO A HARNESS ASSOCIATION THAT IS PRESENTLY CONDUCTING A TROTTING AND PACING MEET PURSUANT TO AN AWARD OF RACING DATES MADE TO IT BY THE COMMISSION PRIOR TO DECEMBER 1, 1973.

August 23, 1974.

Mr. James A. Callahan, Secretary,
Maryland Racing Commission.

You have asked our opinion whether the Maryland Racing Commission has the authority to award additional racing dates to a harness association that is presently conducting a trotting and pacing meet pursuant to an award of dates made to it by the Racing Commission prior to December 1, 1973.

Historically the minutes of the Racing Commission indicate that the award of racing dates always has been made by the Commission prior to the running of a racing meet. The first legislative Act establishing the Racing Commission required that all racing dates be awarded on or before March 1, for racing within the current year. Section 7 of Chapter 273 of the Laws of 1920. There was no winter racing at that time. In 1963 the number of racing dates that the Commission could award was increased by the General Assembly in Chapter 365 of the Laws of that year. Section 7(b) was amended to read in pertinent part as follows:

"Said Racing Commission shall, as soon as practicable during nineteen hundred and sixty-three (1963) award all dates for racing in the State of Maryland within the current year, and shall, on or before December 1 of nineteen hundred and sixty-three (1963) and on or before December